

Internal Revenue Service
memorandum

DFBergkuist

CC:INTL:496-90

date: 19 SEP 1990

to: District Counsel, [REDACTED]
ATTN: [REDACTED]

from: Phyllis E. Marcus CC:INTL
Chief, Branch 2

subject: Canadian Foreign Tax Credit-PGRT

This is in reply to your memorandums dated August 1 and August 28, 1990, requesting a reconsideration of the position of the Office of the Associate Chief Counsel (International) with respect to the creditability of certain taxes imposed by Canada under the Petroleum Gas Revenue Tax (PGRT) Act for years after 1981.

You have stated that it is your belief that the PGRT does not allow the recovery of significant costs of the business operations of either [REDACTED] in particular or the Canadian petroleum industry as a whole to permit such tax to be creditable pursuant to the application of section 901 or 903 of the Internal Revenue Code.

This Office has considered the creditability of the PGRT for years after 1981 on several occasions. Several PLRs have been issued to taxpayers that find this tax to be creditable. Also, in a memorandum dated October 5, 1989, we specifically reconsidered the creditability of all charges levied by Canada under the PGRT Act and again found the PGRT to be creditable for years after 1981.

The position taken in the PLRs that you refer to in your memos was based upon representations made, facts submitted, and a subsequent analysis of the circumstance surrounding the charges in question. In our reconsideration of the PGRT, as well as the other charges levied under the PGRT Act, we conducted an independent analysis of all of the pertinent data available to us including published statistics that, on an industry wide basis, expenses not permitted to be deducted under the PGRT were roughly equal to, or were less than, the resource allowance available in post 1981 years. Thus, the PGRT was found to reach net income thereby satisfying the requirements of section 1.901-2(b)(4)(i) of the regulations and was again determined to be creditable.

Based upon the information that we considered, we do not feel that a change in our conclusion about the creditability of the PGRT for years subsequent to 1981 is warranted. The fact that the disallowed deductions in the [REDACTED] case that you

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presently have under consideration may not be consistent with (i.e. are greater than) other taxpayers in the Canadian petroleum industry is not conclusive as to the noncreditability of the PGRT. The creditability of a specific levy is determined with respect to the whole class of taxpayers who are liable for the levy.

If you have any new information concerning expenses incurred by the oil industry in Canada that might impact upon our analysis of this issue, we would be glad to consider it.